

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE:

APPLICATION OF

A-2014-2416127

RASIER-PA, LLC

MOTION FOR RECONSIDERATION

Protestant, Executive Transportation Company, Inc. (hereinafter referred to as “Protestant”), by and through its attorney, Michael S. Henry, Esquire, hereby moves this Honorable Commission to reconsider its Order and Opinion, entered December 5, 2014, for the following reasons:

I. BACKGROUND

1. This matter involves the application of Rasier-Pa, LLC (“Applicant”) for authority to operate as a “motor common carrier of persons” in experimental service between points in Allegheny County (“Application”).” In its Application, Rasier-PA proposes:

...to use a digital platform to connect passengers to independent ride-sharing operators (“Operators”) with whom Applicant intends to contract. Operators will use their personal, noncommercially licensed vehicles for the purpose of providing transportation services. The Applicant plans to license the Uber technology to generate leads from riders who need transportation services. Applicant does not own vehicles, employ drivers, or transport passengers.

2. The proposed service is taxicab service (“call or demand”)¹, with the only difference being that the Applicant does not propose to own its own vehicles, but rather, to use “non-professional drivers in their private vehicles” who are not authorized by the Commission to provide call or demand service.

3. In its Opinion and Order, the Commission uses the term “innovative” to describe “the use of so-called non-professional drivers in their private vehicles.” Opinion at p. 21.

4. But the Public Utility Code defines operation as a motor carrier without a certificate of public convenience as a crime. 66 Pa. C.S. §3310.

5. And, in the past, the Commission has used the term “gypsy cab” to describe “the use of so-called non-professional drivers in their private vehicles” without certificates of public convenience. See e.g., *Philadelphia Suburban Water Co. v. Pennsylvania Public Utility Commission*, 808 A.2d 1044, n.8 (Cmnwlth. Ct. 2002) (citing *Israel v. Pennsylvania Public Utility Commission*, 52 A.2d 318 (Pa. 1947), wherein the gypsy cab driver claimed that he was performing a public service because there was a shortage of adequate taxicab service in Philadelphia.)

¹ The Applicant’s parent company, Uber Technologies, Inc., was originally called “UberCab.”

6. The Commission notes that “[t]he pervasive use of smartphones and the Internet in our society has revolutionized various sectors of our economy.”

7. While true, the use of smartphones and the Internet in the taxicab industry in Pennsylvania is neither new nor innovative, as many certified taxicab carriers have used technology platforms that utilize the internet and smartphone devices.

8. But they do so lawfully, by facilitating call or demand service only by certified carriers; they do not use “so-called non-professional drivers in their private vehicles” without certificates of public convenience.

9. Protestants filed Protests to the Application challenging, *inter alia*, the Commission’s jurisdiction to consider the Application on the grounds that the Applicant does not propose to operate as a “motor carrier” within the meaning of the Code. 66 Pa. C.S. §102

10. On September 25, 2014, Administrative Law Judges Mary D. Long and Jeffrey A. Watson (“ALJs”) issued a recommended decision in which they found that the Commission did have jurisdiction to consider the Application and that “[i]t is appropriate to consider the transportation service proposed by the Applicant under the Commission’s experimental service regulation as a motor carrier.” Conclusion of Law No. 7

11. But the ALJs recommended denial of the Application on the grounds that the Applicant did not sustain its burden of demonstrating that it is “committed to protecting the public – both drivers and passengers.”

12. The ALJs concluded that the granting of the Application was not in the public interest based largely on the lack of evidence that the Applicant would exercise direct supervision and control over the vehicles and drivers that would be providing the proposed service.

13. Protestants filed an Exception to Conclusion of Law No. 7 of the ALJs’ Recommended Decision that “[i]t is appropriate to consider the transportation service proposed by the Applicant under the Commission’s experimental service regulation as a motor carrier.”

14. On December 5, 2014, the Commission entered an Opinion and Order, *inter alia*, denying Protestants’ Exception and overruling the ALJs recommendation that the Application be denied.

15. Protestants now timely seek reconsideration of the Opinion and Order.

II. GROUNDS FOR RECONSIDERATION

A. THE COMMISSION DOES NOT HAVE JURISDICTION OVER THE APPLICATION BECAUSE APPLICANT DOES NOT PROPOSE TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE

16. In finding that it has jurisdiction to consider the Application, the Commission found that vehicle ownership is not required.

17. While true, the critical factor that distinguishes a “motor carrier” from a “broker” is custody or control over a vehicle.

18. A “common carrier by motor carrier” is not required to own or operate a vehicle, but is, as part of its obligations under the Code to assume custody, control and supervision of each vehicle it operates under its certificate of public convenience.

19. The following statutory definitions are critical to an understanding of the issues presented in this motion.

20. The term “common carrier,” is defined in the Public Utility Code, and provides as follows:

Any and all persons or corporations holding out, offering, or undertaking, directly or indirectly, service for compensation to the public for the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by, through, over, above, or under land, water, or air, and shall include forwarders, **but shall not include** contract carriers by motor vehicles, or **brokers**, or any bona fide cooperative association transporting property exclusively for the members of such association on a nonprofit basis.

Emphasis added

21. Likewise, the definition of “common carrier by motor vehicle,” contained in the Public Utility Code, further clarifies the definition of “common carrier” and provides, in pertinent part:

Any common carrier who or which holds out or undertakes the transportation of passengers or property, or both, or any class of passengers or property, between points within this Commonwealth by motor vehicle for compensation, **whether or not the owner or operator of such motor vehicle**, or who or which provides or furnishes any motor vehicle, with or without driver, for transportation or for use in transportation of persons or property as aforesaid,

Emphasis added.

22. Finally, because the definition of “common carrier” excludes brokers, the definition of the term “broker” contained in the Public Utility Code provides further clarification of the above terms and provides as follows:

Any person or corporation not included in the term “motor carrier” and not a bona fide employee or agent of any such carrier, or group of such carriers, who or which, as principal or agent, sells or offers for sale any transportation by a motor carrier, or the furnishing, providing, or procuring of facilities therefor, or negotiates for, or holds out by solicitation, advertisement, or otherwise, as one who sells, provides, furnishes, contracts, or arranges for such transportation, or the furnishing, providing, or procuring of facilities therefor, other than as a motor carrier directly or jointly, or by arrangement with another motor carrier, **and who does not assume custody as a carrier.**

Emphasis added.

23. Based on the foregoing, it is clear that the assumption of custody of a vehicle used to provide service as a “common carrier by motor vehicle” is necessary to distinguish it from a mere broker of motor carrier services.

24. Based on the foregoing, the Commission erred in concluding that it had jurisdiction to grant the Application in this matter because the Applicant is proposing to act as a “broker” and not a “common carrier by motor vehicle” within the meaning of the Public Utility Code.

**B. THE APPLICANT HAS PROVIDED
UNAUTHORIZED SERVICE SINCE THE
COMMISSION APPROVED THE APPLICATION
AND SINCE THE COMMISSION ISSUED ITS
ORDER IN THIS MATTER**

25. In defiance of a long line of Commission orders directing the Applicant and its parent companies and affiliated entities to cease and desist providing unauthorized service, the Applicant continues to thumb its nose at the Commission by continuing to operate.

WHEREFORE, Protestants, respectfully requests this Honorable Commission to reconsider its Order and Opinion approving the Application and deny the Application.

Respectfully submitted,

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Date: December 22, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IN RE:

APPLICATION OF

A-2014-2424608

RASIER-PA, LLC

CERTIFICATE OF SERVICE

I, Michael S. Henry, hereby certify that I mailed by first class mail, postage prepaid, a copy of the foregoing Answer to the following:

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